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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,404	01/09/2004	Cecile Sandin	018798-129	7896

21839 7590 01/25/2006

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EXAMINER

REICHLE, KARIN M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/753,404

Applicant(s)

SANDIN ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/04, 9/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-6, drawn to a method of producing an absorbent article, classified in class 156, subclass 73.1.
 - II. Claims 7-13, drawn to an absorbent article, classified in class 604, subclass 385.11.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as one that does not require folding as claimed in the process claims, see claim 7, line 16, i.e. "optionally", which claim serves as an evidence claim.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification which would lead to diverging fields of search, restriction for examination purposes as indicated is proper.

2. During a telephone conversation with Mr. William Rowland on January 13, 2006 a provisional election was made without traverse to prosecute the invention of Group II, claims 7-13. Affirmation of this election must be made by applicant in replying to this Office action.

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Claims 1-6 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Specification

Priority

4. The provisional application no. set forth in paragraph 1 is inaccurate, i.e. numerals have been reversed. Correction is required.

Drawings

5. The drawings are objected to because in Figure 1, the leftmost undenoted dashed lead line should be denoted 7. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of

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the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Description

6. The abstract of the disclosure is objected to because terminology which can be inferred, i.e. "The present invention relates to", and legal terminology, i.e. "comprising" and "means", should be avoided. Correction is required. See MPEP § 608.01(b).

7. The disclosure is objected to because of the following informalities: in paragraph 21, line 1, "he" should be --the--.

Appropriate correction is required.

Claim Objections

8. Claims 7-13 are objected to because of the following informalities: in claim 7, lines 14 and 15, "the" (first) should be deleted. Claims 9-13 which are directed to an absorbent article depend from one of the withdrawn method claims, i.e. claim 6, i.e. in claim 9, line 1, "6" should be --7--. Claim 9 will be treated as depending from claim 7 for purposes of examination on the merits. Appropriate correction is required.

Claim Rejections - 35 USC § 112

9. Claims 7-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 7 and 8, what is claimed as optionally having the folded portions or being without folded portions, respectively? The other portion? Both portions?

Claim Language Interpretation

10. Due to the lack of clarity discussed supra, claims 7 and 8 are interpreted as optionally comprising folded parts or without folded parts in at least the other portion, i.e. claim 7 may include folded portions in both the one and other portions, neither portion or just the other portion, and claim 8 is interpreted to requires at a minimum no folded parts in the other portion. The terminology “means” is used in the claims. Such use is interpreted as not invoking 35 USC 112, sixth paragraph, since such use does not comply with the three prongs set forth in MPEP 2181. With regard to claims 9 and 12-13, the weld seam is interpreted as the seam formed by the weld, i.e. from the laterally innermost portion of the weld to the lateral outermost, i.e. terminal, edge of the side portion and thus the width of the weld seam is the width of such seam not the width of the weld. Finally it is noted that the side edge portions are not claimed as being the side parts or as extending the full length of the side parts, i.e. it is not claimed that the weld extends the full length from the waist opening to the leg opening. Also with regard to claim 11, it is noted that 1N/25mm=150 grams force/inch.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 7-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Fleischer '728.

See Claim Language Interpretation section supra and '728 at Figures 1-4, and 7-8, page 6, line 20-page 7, line 13, page 10, line 19-page 11, line 19, page 11, line 29-page 12, line 33, page 13, lines 7-9 and 28-30, page 17, lines 6-7.

Claim 7: '728 teaches an absorbent article in the form of diaper pants or a sanitary panty 10 with a waist opening 15 and two leg openings 14, an absorbent body 18 enclosed between an inner, liquid-permeable cover sheet 16 and an outer cover sheet 17, at least one of said cover sheets being made of a thermally-weldable material, see the paragraph bridging pages 10-11, a front portion 11, a rear portion 12 and a crotch portion extending between the front and rear portions, wherein the crotch portion includes and is delimited by the leg openings 14 of the absorbent article, wherein the front portion and rear portion have side parts extending laterally outside the absorbent body from the waist opening to the leg openings, see Figures 3-6, and which are at least partially elastic, see elements 20-21, wherein the side-edge portions of one of the front portion or rear portion overlap the side-edge portions of the other of the front or rear portion, optionally comprising folded parts, see Figures 3 and 4, and are connected to the side-

edge portions of the other of the front or rear portion by means of a weld seam extending along the full length of the side-edge portions, see cited portions of '728 supra.

Claim 8: see Figure 4, i.e. a minimum of no folded parts in the other portion.

Claims 9 and 12-13: see, e.g., page 11, lines 31-36 of '728 and Claim Language

Interpretation section supra.

Claims 10-11: see Claim language Interpretation section supra and page 12, line 24-page 13, line 9, i.e. the weld seam can be torn open and the weld seam has a strength of 10-45 N/25mm.

Conclusion


13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited, but not applied, references also show various absorbent pants with seams.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
January 19, 2006